

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE BURKS,

Defendant-Appellant.

UNPUBLISHED

July 14, 2005

No. 252799

Wayne Circuit Court

LC No. 03-005783-01

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) [penetration of person under thirteen years of age], and was sentenced to two to ten years’ imprisonment. He appeals as of right. We affirm.

I. FACTS

This case stems from an allegation that in 2001 defendant made his then five-year-old cousin perform oral sex on him. Defendant contends that the prosecution presented insufficient evidence to sustain his conviction. We review de novo a challenge to a conviction based on the sufficiency of the evidence. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The prosecution must introduce evidence sufficient to justify a rational trier of fact in concluding that all of the essential elements of the crime were proved beyond a reasonable doubt. *People v Jermell Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

II. STANDARD OF REVIEW

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence in the light most favorable to the prosecution. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). Sufficient evidence exists when, “taken as a whole, it justifies submitting the case to the trier of fact.” *Id.* Furthermore, under MCL 750.520h, a trier of fact may convict on the uncorroborated testimony of a CSC victim. *People v Lemmon*, 456 Mich 625, 643, n 22; 576 NW2d 129 (1998).

III. ANALYSIS

A person is guilty of CSC-I if he or she engages in sexual penetration with another person who is under the age of thirteen. MCL 750.520b(1)(a); *People v Hack*, 219 Mich App 299, 303; 556 NW2d 187 (1996). MCL 750.520a(o) defines sexual penetration as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body.” In *People v Bruce Johnson*, 432 Mich 931; 442 NW2d 625 (1989) (*Bruce Johnson II*), our Supreme Court adopted the dissenting opinion from *People v Bruce Johnson*, 164 Mich App 634, 646-649; 418 NW2d 117 (1987) (*Bruce Johnson I*), in which Judge Michael J. Kelly provided several definitions for fellatio. These included “the act of taking the penis into the mouth” and “‘to suck’ or ‘oral stimulation of the penis.’” *Bruce Johnson I*, *supra*, 647, quoting *People v Harris*, 158 Mich App 463, 469; 404 NW2d 779 (1987).

In the instant case, evidence of sexual penetration existed in that the victim testified that defendant made him “suck his wee wee” and indicated that by “wee wee” he meant penis. This falls within the definition of fellatio adopted in *Bruce Johnson II* and the statutory definition of sexual penetration expressly includes fellatio. MCL 750.520a(o). Under *Lemmon*, *supra*, 643 n 22, the victim’s testimony provided sufficient evidence on the element of sexual penetration. And it is undisputed that the victim was under the age of thirteen. Viewed in the light most favorable to the prosecution, there was sufficient evidence for the trial court to find defendant guilty of CSC-I beyond a reasonable doubt.

Affirmed.

/s/ Peter D. O’Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello